

Before The
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF AMERICAN POSTAL WORKERS
UNION, AFL-CIO

Docket No. C2013-10

**UNITED STATES POSTAL SERVICE MOTION TO DISMISS
THE COMPLAINT OF THE AMERICAN POSTAL WORKERS UNION, AFL-CIO**
(September 25, 2013)

Table of Contents

Preliminary Statement	1
Factual Background.....	4
Argument	8
I. The APWU Lacks Standing to Pursue Any Claim as It Has Alleged No Injury-In-Fact.....	8
II. APWU Fails to State Any Claim Upon Which the Commission Can Issue a Remedy	10
A. The APWU Has Failed To Allege Any Facts In Support of Its Claim of Undue or Unreasonable Discrimination in Violation of 39 U.S.C. § 403(c)	11
B. The APWU Presents No Facts to Support the Allegation that the Postal Service Failed to File a Change of Service Case with the Commission as Required by 39 U.S.C. § 3661	13
C. The APWU Fails to State a Claim Alleging a Violation of 39 U.S.C. § 3691 Because the Complaint Does Not Identify the Applicable Regulatory Requirements Or Allege a Violation in an Area for which Service Standard Compliance Is Measured.....	16
III. The APWU’s Allegations Regarding 39 U.S.C. § 3691(d) Are Not Ripe.....	20
A. The Allegations Regarding a Violation of 39 U.S.C. § 3691 Are Not Yet Ripe Because the Operational Changes at Issue Are Not Complete.....	21
B. The Allegations Regarding a Violation of 39 U.S.C. § 3691 Are Not Yet Ripe Because the Necessary Factual Record Does Not Yet Exist.....	23
C. The Allegations Regarding a Violation of 39 U.S.C. § 3691 Should Be Dismissed as Unripe on Grounds of Administrative Economy	25
IV. The APWU Is Precluded from Presenting Claims Pursuant to 39 U.S.C. § 3661 and 39 U.S.C. § 3691(d).....	27
Conclusion.....	31

On September 5, 2013, the American Postal Workers Union, AFL-CIO (“APWU”) filed a complaint (“Complaint”) with the Postal Regulatory Commission (“Commission”) alleging violations of 39 U.S.C. §§ 3661 and 3691.¹ Pursuant to 39 C.F.R. § 3030.12(b),² the United States Postal Service hereby submits this motion to dismiss the Complaint (“Motion”). As set forth more fully below, the Commission should dismiss the Complaint with prejudice for lack of standing, failure to state a claim, ripeness and claim preclusion.

Preliminary Statement

Rehashing facts, issues and concerns that the Commission has already identified, discussed and ruled upon, the APWU is once again before the Commission in a desperate attempt to thwart the Network Rationalization Plan that the Commission reviewed in Docket No. N2012-1. This fourth bite at the apple must not be permitted to proceed, and the Commission must help the APWU face the reality that the Commission has already spent considerable time and effort in a full and robust exercise of authority under section 3661 to provide its opinion to postal management regarding the Postal Service’s Network Rationalization Plan. While the APWU may disagree with the Commission’s dismissal of the eight service complaints already filed by the APWU and various local chapters, the Commission should not entertain continued attempts to repeatedly litigate the same claims and issues.

¹ The APWU titles its Complaint as alleging violations of sections 3661 and 3691; however, the substance of its Complaint also alleges violations by the Postal Service of 39 U.S.C. § 403(c). As such, the Postal Service also will address those section 403(c) allegations in this motion to dismiss.

² Pursuant to this rule, the Postal Service’s Answer is deferred. If the Commission denies the Postal Service’s motion or postpones disposition, the Postal Service’s answer is due within 10 days of the Commission’s action.

In its haste to attempt, once again, to impede further implementation of the Network Rationalization Plan, the APWU also has ignored one of the core principles of American jurisprudence, the requirement that the grieving party be injured in order to seek a remedy. Rather than setting forth some actual injury, the APWU tries to get by on misdirection. The APWU starts promisingly enough with an assertion that it sends items via the Postal Service, but it then goes on to discuss the Postal Service's alleged wrongs at length only in terms of the impact on other postal customers, such as the Wall Street Journal, Sports Illustrated, and residents of Gideon, Missouri. Throughout its litany of allegations, however, the APWU fails to mention a single way in which it, as a postal customer, has suffered any harm as a result of any perceived service performance failure. The APWU may wish to pose as a noble protector of the welfare of mail senders and recipients nationwide and volunteer to seek redress for any disappointments in service that any other postal customer may suffer anywhere, at any time. However, such assertions of nobility do not confer standing upon the APWU to pursue a postal service complaint under section 3662. Absent an alleged injury relating to its own experience as a postal customer, the APWU has no basis for using the Commission's postal customer complaint review process as a forum to pursue delay in the implementation of the Network Rationalization Plan, much less as a means to thwart unwelcome changes that the initiative may have on the working conditions of postal employees in the collective bargaining unit that the APWU represents. The Commission's complaint process is an improper venue for the pursuit of the APWU's agenda.

Furthermore, the APWU's "evidence" of the Postal Service's alleged failure to satisfy its service standards as a result of the Network Rationalization Plan amounts to little more than a mix of conjecture and anecdote. Needless to say, such concoction bears no relevance to actual service performance measurement. As the Commission has established by rule that service performance measurement and periodic reports make up the tool by which the Commission determines the Postal Service's compliance with its established service standards. The APWU sidesteps the Commission's well-established service performance reporting methods and instead argues that the Commission should look to anecdotal evidence to find particular and localized instances of service performance failures. Such a request is at odds with a history of the Commission reviewing service performance using the set criteria in the regulations.

Ultimately, this latest complaint filed by the APWU is one in a series of labor relations complaints that seek to derail, or at least delay, the Postal Service's Network Rationalization Plan. Asserting the role of a mailer does not diminish the fact that the APWU's real motive for this Complaint is to protect its ranks and litigate its potential labor relations disputes before the Commission. The Commission should not be duped by yet another attempt by the APWU to hijack processes designed for users of the mails to seek redress for compliance with select provisions of Title 39. Instead, the Commission should send a clear signal that its postal customer complaint review process does not exist for the purpose of providing postal unions, which suffer from no shortage of well-established venues for resolution of labor-management issues, yet another forum in which to oppose operational determinations by Postal Service management that have consequences for postal employees.

Factual Background

On September 21, 2011, the Postal Service published an advance notice of proposed rulemaking (“ANPR”) in the *Federal Register* to revise 39 C.F.R. Part 121.³ The revisions in the ANPR proposed to alter the service standards for some market dominant products, thereby facilitating the consolidation of its mail processing operations and reduction in the number of facilities committed to these operations. The ANPR stated that, if the Postal Service determined to go ahead with its plan, it would seek an advisory opinion from the Commission pursuant to 39 U.S.C. § 3661 and would publish a notice of proposed rulemaking. As a result of the ANPR, the Postal Service received more than 4,200 comments, including comments from the national office of the APWU.

On December 5, 2011, the Postal Service filed its request for an advisory opinion from the Commission (“Request”) on the proposal to revise the service standards for market dominant products.⁴ The Request also informed the Commission that the Postal Service was conducting a parallel notice-and-comment rulemaking to revise the service standards.

On December 15, 2012, the Postal Service published a Notice of Proposed Rule (“NPR”) in the *Federal Register* proposing new service standards for certain market dominant products.⁵ In response to the NPR, the Postal Service received more than 100 written comments.

³ Proposal to Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail, 76 Fed. Reg. 58,433 (Sept. 21, 2011).

⁴ Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, Docket No. N2012-1 (Dec. 5, 2011).

⁵ Service Standards for Market-Dominant Mail Products, 76 Fed. Reg. 77,942 (Dec. 15, 2011).

On May 17, 2012, the Postal Service issued a press release announcing its intention to implement new service standards for market dominant products and consolidate its network in two phases.⁶ The press release stated that, on July 1, 2012, the Postal Service would implement the first phase of service standard changes, which would maintain overnight service for First-Class Mail designated as Intra-SCF,⁷ and that the second phase would be implemented on February 1, 2014, unless the circumstances of the Postal Service change. The Postal Service published its final rule adopting this phased service standard implementation plan on May 25, 2012 (“Final Rule”).⁸ The press release was accompanied by a list of facilities at which consolidations were expected to be implemented during Phase 1.⁹ In response to an inquiry from the Commission during Docket No. N2012-1, the Postal Service presented testimony making clear that the press release:

reflected an overview of the modified network implementation plan at the time that . . . [it] . . . was published. The implementation plan is expected to evolve as numerous facility-specific details are refined and modified.¹⁰

On June 13, 2012, the APWU filed a complaint alleging violations of 39 U.S.C. §§ 3661 and 3691.¹¹ Concurrent with filing its complaint, the APWU also filed a Motion for

⁶ Postal Service Press Release PR 12-058, Postal Service Moves Ahead with Modified Network Consolidation Plan (May 17, 2012), Docket No. N2012-1, Tr. Vol.9/2713-14.

⁷ Intra-SCF is defined as mail that originates and destines in the same geographic area served by a single sectional center facility and that is entered before the critical entry time.

⁸ Revised Service Standards for Market-Dominant Mail Products, 77 Fed. Reg. 31190 (May 25, 2012) (to be codified at 39 C.F.R. Part. 121).

⁹ See Docket No. N2012-1, Tr. Vol. 9/2719-25.

¹⁰ Docket No. N2012-1, Tr. Vol. 9/2712 (emphasis added); see also *id.* 9/2731.

¹¹ Complaint of the American Postal Workers Union, AFL-CIO Regarding Violations of 39 U.S.C. 3661 and 3691, Docket No. C2012-2 (June 13, 2012).

an Emergency Order requesting that the Postal Service be enjoined from implementing its proposed service standards changes until the Commission ruled on the underlying complaint.¹² Following motions practice on both filings, the Commission denied the motion on June 29, 2012,¹³ and dismissed the complaint on September 10, 2012.¹⁴

From July 2012 through September 2012, the Postal Service closed or consolidated 46 mail processing plants as part of Phase 1, pursuant to the proposal submitted to the Commission in Docket No. N2012-1 and in accordance with the service standards established in the Final Rule. To avoid disrupting the 2012 fall catalog, election and holiday mailing surges, the Postal Service scheduled limited mail processing consolidations during the final months of 2012, with plans to resume Phase 1 closings and consolidations in early 2013.

During the break in Phase 1, the Postal Service determined that certain mail processing plant closures or consolidations originally scheduled for Phase 2 could be implemented during the latter part of Phase 1 while preserving operations necessary to achieve the service standards that took effect in July 2012. Accordingly, on January 14, 2013, the Postal Service issued a press release announcing that the Postal Service “Board of Governors has directed management to accelerate the restructure of Postal Service operations to further reduce costs in order to strengthen Postal Service finances.” On March 26, 2013, the Postal Service notified leaders of the various postal unions, including APWU president Cliff Guffey, that pursuant to the Board of Governors’

¹² American Postal Workers Union, AFL-CIO, Motion for an Emergency Order, Docket No. C2012-2 (June 13, 2012).

¹³ Order No. 1387, Order Denying American Postal Workers Union, AFL-CIO, Motion for an Emergency Order, Docket No. C2012-2 (June 29, 2012).

¹⁴ Order No. 1463, Order Dismissing Complaint, Docket No. C2012-2 (Sept. 10, 2012).

directive, the Postal Service would advance to Phase 1 the closing and consolidation activity for 53 mail processing plants originally scheduled for Phase 2 beginning February 1, 2014.¹⁵ The letter further explained that the accelerated implementation schedule for the 55 mail processing plants would still permit the Postal Service to maintain the Phase 1 Intra-SCF service standard.

In April 2013, seven APWU Local Chapters filed nearly identical complaints with the Commission. These complaints alleged that the Postal Service's ongoing implementation of the Network Rationalization Plan, which was first announced in September 2011—and which had already been the subject of Docket Nos. N2012-1 and C2012-2, as described above—violated 39 U.S.C. § 101(d), section 302 of the Postal Accountability and Enhancement Act of 2006 (“PAEA”), and unspecified provisions of the National Labor Relations Act (“NLRA”). The Postal Service moved to dismiss the complaints on several grounds, including lack of jurisdiction, failure to set forth any issues of material fact or law that would entitle the complainants to relief, and procedural defects. In Order No. 1762, the Commission dismissed all seven complaints with prejudice.¹⁶

The APWU now presents this Complaint, essentially repeating the arguments previously presented in the June 2012 APWU complaint and the seven complaints by the APWU locals.

¹⁵ By letter dated March 28, 2013, the Postal Service informed the national leadership of the various postal unions, including the APWU, that two additional locations were being moved from Phase 2 to Phase 1 implementation. The total number of locations, therefore, increased from 53 to 55.

¹⁶ Order No. 1762, Order Dismissing Complaints, Docket Nos. C2013-3, C2013-4, C2013-5, C2013-6, C2013-7, C2013-8 and C2013-9 (June 26, 2013).

Argument

I. The APWU Lacks Standing to Pursue Any Claim as It Has Alleged No Injury-In-Fact

The Complaint alleges violations of 39 U.S.C. §§ 403(c), 3661, and 3691. Before the APWU can bring each substantive basis for complaint before the Commission, the APWU must satisfy the threshold standard established in 39 U.S.C. § 3662 to determine whether a complaint is proper. Specifically, 39 U.S.C. § 3662(a) provides:

Any interested person . . . who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter . . . may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe. (Emphasis added.)

Plainly, Congress intended “interested person” to mean something more specific than “user of the mails,” a phrase that Congress consciously used in other provisions of Title 39, including those that were enacted at the same time as the current section 3662.¹⁷ Although Title 39 does not define “interested person,” it is clear that section 3662 requires more of an individualized complaint than the mere fact that one uses the mails.

The Commission would do well to construe “interested person” to require some threshold showing of particularized injury. The Commission cannot simply transmute Congress’s choice of “interested persons” into a more generic phrase, such as “users of the mail” or “persons.” In construing “interested persons,” the Commission would do well to heed the guidance of the Supreme Court. In a case concerning the application of the phrase “party in interest” in administrative proceedings, the Court stated that the term “must be interpreted in accordance with the rules relevant to standing to become

¹⁷ *E.g.*, 39 U.S.C. §§ 3642(a) (allowing proceedings for changes to the market dominant and competitive product lists “[u]pon request of the Postal Service or users of the mails”), 3653(a) (allowing for public comment “by users of the mails” regarding the Postal Service’s Annual Compliance Report).

parties in proceedings.”¹⁸ In turn, “standing” requires that “the party invoking the power of the court . . . have suffered a concrete and particularized injury,” and not merely that it “have a keen interest in the issue.”

In this case, the APWU has not made the barest effort to establish a concrete and particularized injury, or some other particularized interest, relevant to its complaint. Its claim to jurisdiction rests solely on the fact that, as a general matter, it mails a number of items to its members.¹⁹ Nowhere in the recitation of alleged wrongs by the Postal Service does the APWU ever allege that even one piece of mail sent or received by the APWU, much less a substantial number, failed to satisfy its codified service standard. Furthermore, even if the APWU made such a statement, there is no claim as to how any such delay or service standard violation resulted in injury to the APWU. Perhaps aware of its deficiency, the APWU attempts to hide behind harms allegedly faced by others not party to this Complaint.²⁰ However, none of this adds up to a claim that the APWU, as a mailer, has suffered injury arising from the Postal Service’s alleged actions. Without an allegation of particularized interest, the APWU would essentially have the Commission replace Congress’s phrase “interested person” with some broader term. Of course, the Commission is well aware that the statute does not read this way.

¹⁸ *Alleghany Corp. v. Breswick & Co.*, 353 U.S. 151, 175 (1957); see also *Hollingsworth v. Perry*, ___ U.S. ___, 133 S. Ct. 2652, 2659 (2013) (“No matter how deeply committed [litigants] may be to [a given legal issue] or how zealous their advocacy, that is not a ‘particularized’ interest sufficient [for standing purposes].”).

¹⁹ Complaint at ¶ 27.

²⁰ It is telling that none of the mailers cited by the APWU have chosen to join this Complaint or file their own complaint with the Commission alleging violations of the service standards. Most likely this is because, as has been the case in past complaints, this is not the service standard case that the APWU claims, but is truly just a labor matter disguised in sheep’s clothing in an attempt to make the Commission the arbiter for the APWU’s labor relations disputes.

II. APWU Fails to State Any Claim Upon Which the Commission Can Issue a Remedy

The APWU has failed in every regard to allege facts sufficient to support any of its allegations. The Commission's rules require that a complainant set forth the facts and circumstances that give rise to the complaint and clearly identify and explain how the Postal Service action or inaction violates applicable statutory standards or regulatory requirements.²¹ These standards are aligned with the Federal Rules of Civil Procedure which require that a complainant provide a “short and plain statement of the claim showing that the pleader is entitled to relief.”²² Further, federal courts are increasingly requiring more specific factual allegations when determining whether a pleading should be dismissed for failing to state a claim upon which relief can be granted.²³ The Supreme Court made clear in *Bell Atlantic Corp. v. Twombly*,²⁴ and *Ashcroft v. Iqbal*²⁵ that the heightened pleading standard requires that a pleading must contain more than “naked assertions devoid of further factual enhancement.” Rather, a pleading “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”²⁶ These standards serve to ensure that complainants put the opposing parties on sufficient notice of the actual claims at issue, and increase the likelihood that complainants have factual support for their claims prior to expending the resources of the relevant tribunal and opposing parties. The same

²¹ 39 C.F.R. §§ 3030.10(a)(1) and (a)(2).

²² FED. R. CIV. P. 8(a)(2).

²³ FED. R. CIV. P. 12(b)(6).

²⁴ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

²⁵ *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

²⁶ *Id.* at 678 (citing *Twombly*, 550 U.S. at 557).

goals apply in the context of Commission complaints, and the Commission would do well to heed the Supreme Court's guidance in *Twombly* and *Iqbal*.

Under these standards, the Complaint fails to allege any viable claim and must be dismissed. Specifically, the APWU asserts a claim for discrimination but provides no facts in support of that claim, alleges that a new section 3661 case should be filed despite the clear instructions from the Commission on when such a case is required, and refuses to identify any regulatory service standards which the Postal Service has allegedly violated. For these reasons, the Commission should dismiss the Complaint.

A. The APWU Has Failed To Allege Any Facts In Support of Its Claim of Undue or Unreasonable Discrimination in Violation of 39 U.S.C. § 403(c)

The APWU's cursory claim of undue and unreasonable discrimination in violation of 39 U.S.C. § 403(c) fails to rise to the level sufficient to survive a motion to dismiss.²⁷ In order to allege discrimination, let alone undue or unreasonable discrimination, the APWU must establish (among other things) that the Postal Service treated one class of persons differently from another, similarly situated class.²⁸ Instead the APWU depicts a universal class of victims:

The Postal Service unreasonably discriminates against individuals, small businesses, and organizational mailers in the provision of postal services by failing to comply with its regulations providing for the delivery of First-Class Mail and other mail, particularly those in rural areas, because the effects of service standard violations are more frequently found there.²⁹

²⁷ Complaint ¶ 23.

²⁸ *E.g., Egger v. United States Postal Serv.*, 436 F. Supp. 138, 142 (E.D. Va. 1977) (taking "different levels of delivery service to different groups of mail users" as premise for section 403(c) complaint).

²⁹ Complaint ¶ 23 (emphasis added).

With “individuals, small businesses, and organizational mailers” in the APWU’s suspect class, one who else is left to whom the Postal Service is supposedly giving preferential treatment. As both a preferred and a harmed group are required to establish discrimination, the APWU fails to offer satisfy even the most basic element of a discrimination claim.

If, instead, the APWU is alleging that the Postal Service is discriminating against rural mailers as compared to their urban counterparts, this is unsupported by any factual allegations in its Complaint and is counter to the claims about the mail processing plants at issue. The APWU asserts one claim of potential adverse effect to rural mailers, that residents in Gideon, Missouri, received delayed water shut-off notices. Even if this anecdotal claim is correct, the APWU fails to contrast it with any preferential treatment to other, similarly situated communities. This single incident of one certain type of mailing in one community is wholly insufficient to establish undue or unreasonable discrimination between rural customers in Gideon, Missouri, or rural customers, much less between rural and non-rural customers nationwide.

Furthermore, the APWU summarizes its alleged service performance failures based on ten mail processing plants. According to the Census Bureau’s 2010 report, of those plants, nine are listed as being in urbanized areas.³⁰ The sole plant not listed is in Edison, New Jersey, a suburb of New York City and the fifth most populous municipality in New Jersey, according to the 2010 census.³¹ To suggest that the termination of operations at these ten urban mail processing plants disproportionately, unduly and

³⁰ See List of 2010 Census Urban Areas, available at http://www2.census.gov/geo/ua/ua_st_list_ua.txt.

³¹ See U.S. Census Bureau Delivers New Jersey’s 2010 Census Population Totals, Including First Look at Race and Hispanic Origin Data for Legislative Redistricting, available at <http://www.census.gov/2010census/news/releases/operations/cb11-cn15.html>.

unreasonably discriminated against rural mailers lacks any factual foundation.

Accordingly, the APWU has alleged no specific facts to support a claim that the Postal Service is discriminating against rural mailers in violation of 39 U.S.C. § 403(c) and the Complaint should be dismissed.

Moreover, even if the APWU were alleging some viable claim of discrimination, that alone would not suffice to make out a section 403(c) claim. The APWU would also have to plead specific facts as to how that discrimination is not reasonable. Section 403(c) is often summarized as requiring that the Postal Service have “reasonable explanation for its business decision” to distinguish between customers.³² The reasonableness test, however, has a very low standard and federal courts have given the Postal Service “broad latitude” when interpreting section 403(c).³³ Thus, so long as any potentially alleged discrimination is reasonably related to a legitimate business goal,³⁴ the Postal Service has not violated section 403(c). As explained below, the Postal Service’s actions flowed from reasonable business decisions aimed at a legitimate business goal: rationalizing the postal network. Therefore, the APWU cannot make out a claim of undue or unreasonable discrimination.

B. The APWU Presents No Facts to Support the Allegation that the Postal Service Failed to File a Change of Service Case with the Commission as Required by 39 U.S.C. § 3661

For the second time in as many years, the APWU has come to the Commission attempting to force the Postal Service to file a new section 3661 change in the nature of postal services case because of a modification to the original Network Rationalization

³² *UPS Worldwide Forwarding, Inc. v. United States Postal Serv.*, 66 F.3d 621, 634 (3d Cir. 1995).

³³ *Id.* at 634 & n.14 (citing *Mail Order Ass’n of Am. v. United States Postal Serv.*, 2 F.3d 408, 434 (D.C. Cir. 1983), among other cases).

³⁴ See *Egger*, 436 F. Supp. at 142.

Plan that was encompassed in the original N2012-1 case. As the APWU set forth in its Complaint, the Postal Service filed its request to modify service standards in Docket No. N2012-1 on December 15, 2011. In May 25, 2012, the Postal Service issued its final rule implementing a phased change in the service standards, retaining the overnight service standard for intra-SCF First-Class mail. The APWU challenged this change by the Postal Service in Docket No. C2012-2 on the grounds that this change required the Postal Service to file a new section 3661 case, the same allegation that it raises in this Complaint. As the Commission has previously held, however, the amendments to the Network Rationalization Plan at issue here do not constitute a fundamental change in the overall purpose and direction of the original Request, and thus, a new section 3661 case is not required.³⁵

The decision to accelerate the consolidation of certain mail processing plants from 2014 to 2013 was a well-reasoned determination, which could be performed without modification to the service standards established by the May 25, 2012 final rule. The Postal Service informed the APWU in March 2013 that, based on management analysis, the Postal Service would be able to accelerate 55 mail processing plants originally slated for consolidation in 2014 to 2013 and that this acceleration would have no impact on service standards.³⁶ As was identified in Docket No. N2012-1, the schedule for consolidating mail processing plants is not static and would change based

³⁵ See Order No. 1463, at 15.

³⁶ On March 26, 2013, the Postal Service notified leaders of the various postal unions, including APWU president Cliff Guffey, that pursuant to the Board of Governors' directive, the Postal Service would advance to Phase 1 the closing and consolidation activity for 53 mail processing plants originally scheduled for Phase 2 beginning February 1, 2014. By letter dated March 28, 2013, the Postal Service informed the national leadership of the various postal unions, including the APWU, that two additional locations were being moved from Phase 2 to Phase 1 implementation. The total number of locations, therefore, increased from 53 to 55.

on management analysis of the implementation of the Network Rationalization Plan. The decision to accelerate was consistent with that analysis and because it was expected to have no effect on service standards, a new section 3661 case before acceleration was not necessary.

The Postal Service does not contest that during implementation there may be individualized instances where mail service temporarily slips below the prescribed service standards. As with any significant network change, unforeseen circumstances will arise. Hence, the Handbook PO-408 process and the Network Rationalization Plan incorporate a Post-Implementation Review (“PIR”) Process to evaluate the network change and make any adjustments necessary to satisfy service standards. This process was outlined in detail in Commission Docket No. N2012-1 in USPS Handbook PO-408 and should come as no surprise to the APWU or the Commission.³⁷ In an attempt to short-circuit this standardized mechanism for review of the mail processing plant consolidation process, the APWU is now requesting that the Commission insert itself into the implementation phase of the Network Rationalization Plan through mandatory initiation of a new section 3661 case. Such an intrusion into the management and operational duties of the Postal Service would only hamper the Postal Service’s ability to correct any service standard issues through the designed PIR process. It would also lead to an advisory opinion with advice nearly identical to that issued by the Commission in Docket No. N2012-1: the Postal Service must strive to ensure that it utilizes its tools to monitor operations and make any necessary

³⁷ See USPS Handbook PO-408 at 25.

adjustments to increase service performance during implementation.³⁸ The Commission should not allow the APWU to force a new section 3661 case on this basis.

C. The APWU Fails to State a Claim Alleging a Violation of 39 U.S.C. § 3691 Because the Complaint Does Not Identify the Applicable Regulatory Requirements Or Allege a Violation in an Area for which Service Standard Compliance Is Measured

The APWU's allegations regarding 39 U.S.C. § 3691 fail to state a claim upon which relief can be granted. Specifically, the APWU alleges that "the Postal Service is regularly failing to comply with the Service Standards set by its regulations . . . which require[] the Postal Service to 'preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining'" per 39 U.S.C. § 3691(b)(1)(B).³⁹ The Complaint further alleges that the Postal Service is not providing the service to which mailers are entitled by 39 U.S.C. § 3691(d).⁴⁰ These allegations are insufficient as a matter of law, difficult to decipher, and inconsistent with established methods for measuring service performance.

Other than general references to 39 U.S.C. §§ 3691(b)(1)(B) and (d), the Complaint fails to identify "citations to the relied upon section or sections of title 39, order, regulation, or other regulatory requirements,"⁴¹ as the Commission's rules require. The Complaint should be dismissed due to this failure to "clearly identify and explain how the Postal Service action or inaction violates applicable statutory standards

³⁸ See Advisory Opinion on Mail Processing Network Rationalization Service Changes (hereinafter "Advisory Opinion"), Docket No. N2012-1 (Sept. 28, 2012), at 39, 69, 72, 107-108.

³⁹ Complaint ¶ 21 (quoting 39 U.S.C. § 3691(b)(1)(B)).

⁴⁰ Complaint ¶ 22.

⁴¹ 39 C.F.R. § 3030.10(a)(2).

or regulatory requirements.”⁴² These Commission rules are not mere technicalities; rather, they are designed to ensure that the Postal Service and the Commission have fair notice of the precise nature of the complaint at hand, so that they might properly analyze and address it.

It is unclear from the Complaint whether the APWU is alleging a violation of both sections 3691(b)(1)(B) and (d). With respect to section 3691(b)(1)(B), any allegations should be dismissed. A complainant simply cannot allege that the Postal Service is violating section 3691(b)(1)(B), which lists only one of several objectives that the Postal Service’s standards should be designed to achieve. Rather, as the statute makes clear, complaints regarding section 3691 must get to either the insufficiency of the regulations promulgated pursuant to section 3691—the entire section read collectively, not merely one isolated objective of it—or a violation of those regulations.⁴³ Thus, any allegations solely regarding section 3691(b)(1)(B) should be dismissed.

The APWU’s allegations regarding section 3691(d) should also be dismissed because the APWU fails to identify the specific service standards at issue. Consistent with the requirements of section 3691, the Postal Service established service standards by regulation in the form of 39 C.F.R. Parts 121 and 122 which cover the service standards for market-dominant mail products and market-dominant special services products, respectively. Despite the availability of the published service standards, the Complaint contains broad assertions that the Postal Service is failing to comply with service standards generally without identifying which, if any, specific service standards

⁴² *Id.*

⁴³ 39 U.S.C. § 3691(d).

are at issue.⁴⁴ By not identifying the regulations and the particular nature of its alleged violations, the APWU is effectively denying the Postal Service a fair ability to respond to the allegations. Such a tactic is clearly unfair to the Postal Service and violates the Commission's Rules of Practice and Procedure, which require citations to the relied upon section or sections of regulations on which the complaint rests.

Even if the Postal Service was able to decipher the specific service standards at issue in the Complaint, the Complaint raises allegations that are not encompassed by the regulations governing service performance reporting. First, the allegations involve discrete service performance problems within a narrow timeframe, not a pattern or trend of problems. Second, the allegations involve service performance within a particular SCF. The Commission's regulations governing service performance, however, require evaluation of service performance on a quarterly and annual basis only, and they do not require evaluation of service performance at the SCF level.⁴⁵ Evaluating the APWU's claims, as alleged, would be inconsistent with the Commission's own well-established regulations governing service performance measurement and reporting.⁴⁶

These regulations require that the Postal Service file reports with the Commission showing service performance for each fiscal year and quarter.⁴⁷ The Commission explained in Order No. 465 that this two-tiered reporting approach, requiring both annual and quarterly reports, would "provide the appropriate level of detail necessary to evaluate a product's overall service performance for the purpose of

⁴⁴ See, e.g., Complaint ¶ 21 ("the Postal Service is regularly failing to comply with the Service Standards set by its regulations").

⁴⁵ See 39 C.F.R. §§ 3055.1-3055.92

⁴⁶ *Id.*

⁴⁷ 39 C.F.R. §§ 3055.1 and 3055.30.

an annual compliance determination.”⁴⁸ The Commission further recognized that requiring “[t]oo great a level of detail could distract from this analysis by requiring focus on potential anomalies in data that might not be relevant to a product’s overall performance.”⁴⁹ The APWU has not proffered any data to support its allegations, and at best, it could currently provide only individual data points, given the timing of the consolidations at issue. Such data are not helpful in evaluating a product’s overall service performance and may contain the anomalies not relevant to a product’s overall performance. As such, the APWU’s approach is inconsistent with the established methods for measuring service performance.

Additionally, the regulations require that the quarterly reports contain service performance at the District, Postal Administrative Area, and/or National levels, depending on the service being reported.⁵⁰ Again, the APWU has not proffered any data to support its allegations; even if the APWU did provide data, however, its allegations involve the impact on delivery in particular SCFs, rather than at the District level (the most granular level at which the Postal Service must report). The Postal Service is not required to provide the service performance data necessary to support an allegation regarding service performance on the SCF level, and such an allegation is inconsistent with the established methods for measuring service performance. As such, the APWU’s allegations fail to state a claim upon which relief can be granted.

Not only do the allegations require a factual showing that would be inconsistent with the accepted method for service performance measurements, they would be

⁴⁸ Order No. 465, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, Docket No. RM2009-11 at 16.

⁴⁹ *Id.*

⁵⁰ See 39 C.F.R. §§ 3055.45 – 3055.65.

considered insufficient under the heightened pleading standard applied in federal courts. Without the availability of actual data to support the APWU's claims regarding service performance, the complaint amounts to "naked assertions devoid of further factual enhancement," and, therefore, fails "to state a claim to relief that is plausible on its face."⁵¹

III. The APWU's Allegations Regarding 39 U.S.C. § 3691(d) Are Not Ripe

In addition to the reasons discussed above, the APWU's claims regarding alleged violations of 39 U.S.C. § 3691(d) should be dismissed because they are not ripe. An agency action is ripe when it has reached a stage that permits judicial resolution.⁵² The APWU's claims alleging violations of section 3691(d) are not ripe for two reasons and, thus, are not at a stage appropriate for Commission resolution. First, implementation of the operational change that serves as the basis for the Complaint is not complete, and its effects on service standards cannot be determined until after implementation is complete. Second, the service performance data used to determine whether the Postal Service has satisfied its service standards does not exist, and the Postal Service's compliance with section 3691(d) cannot be determined until service standard reports addressing multiple periods after full implementation of the pertinent operational change are available for analysis. Moreover, litigating the claims at issue in the Complaint at this time would be duplicative and result in a waste of Commission and party resources, particularly because the Commission will address any service performance questions as part of the Annual Compliance Determination process. The

⁵¹ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 557).

⁵² See *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 807-808 (2003); *Abbott Labs. V. Gardner*, 387 U.S. 136, 148 (1967).

Commission has recognized that claims brought in a complaint should be dismissed if they are not ripe.⁵³ Accordingly, the Commission should dismiss the APWU's claims alleging violations of section 3691(d).

A. The Allegations Regarding a Violation of 39 U.S.C. § 3691 Are Not Yet Ripe Because the Operational Changes at Issue Are Not Complete

The APWU challenges an incomplete Postal Service operational change as a violation of section 3691 while implementation is still ongoing, and thus the section 3691 claims are not ripe for review. Ripeness involves determining whether decisions of a particular agency are at a stage which permits judicial resolution.⁵⁴ The rationale underlying the ripeness doctrine is “to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.”⁵⁵ As described in more detail below, the impact of an operational change on the scale of the mail processing network realignment challenged in this docket cannot be determined until completion of the multi-stage implementation process, and, accordingly, it would be premature and inappropriate for the Commission to consider the APWU's claims until implementation is complete.

In Docket No. N2012-1, the Commission addressed concerns about the Postal Service's ability to meet service standard requirements as it continued to realign its mail processing network. Specifically, the Commission recognized the importance of “the experience [that the Postal Service] gains from the partial implementation” of the mail

⁵³ Order No. 797, Order Dismissing Complaint, Docket No. C2011-3 (August 11, 2011), at 8.

⁵⁴ See *Abbott Labs.*, 387 U.S. at 148.

⁵⁵ *Id.* at 148-149.

processing network realignment and the staggered schedule. This allows the Postal Service's to review individual consolidations during implementation, identify potential unforeseen issues, and institute measures to reduce potentially negative impacts to service standards.⁵⁶ This experience includes "data collection, careful analysis, and an examination of its assumptions."⁵⁷ The benefits of this experience are not available, and the operational change cannot be finalized and optimized, until the implementation process is complete. For example, the post-implementation review (PIR) process, a comprehensive analytical evaluation process that occurs after implementation begins and serves as one of the most important phases of implementation, considers a number of factors, including the impact on the ability of the Postal Service to meet service standards.⁵⁸ The PIR process is used to identify aspects of the planned mail processing network realignment that require modification to avoid concerns related to service standards and other issues.⁵⁹

As described above and in more detail in Docket No. N2012-1, the true elements of an operational change involving mail processing network realignment do not become apparent until completion of the full implementation process, including PIRs. Determination of the impact on service standards arising from the mail processing network realignment activities associated with the facilities cited in the complaint cannot be made until the implementation process is complete. Where, as in the present case,

⁵⁶ Advisory Opinion, at 71-72.

⁵⁷ *Id.*

⁵⁸ See Postal Service Handbook PO-408 at 7-1 (directing the PIR process to include an assessment of whether levels of service are achieved by mail processing network realignment).

⁵⁹ See USPS Handbook PO-408 at 25.

implementation is not complete, a claim alleging a violation of section 3691 is simply not ripe.

B. The Allegations Regarding a Violation of 39 U.S.C. § 3691 Are Not Yet Ripe Because the Necessary Factual Record Does Not Yet Exist

Because implementation is not complete, the service performance measurement data required to support findings of a violation of 39 U.S.C. § 3691(d) do not exist. As explained above, one purpose of the ripeness doctrine is “to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.”⁶⁰ The APWU cannot show the concrete effects of the consolidations at issue without actual facts to support its claim that the Postal Service is not meeting its service performance standards. Consistent with the approach taken by federal courts when evaluating whether a claim is prudentially ripe, the Commission should dismiss the Complaint because “the facts upon which its resolution may depend are not ‘fully crystalized,’ nor does [the APWU] feel their effects in a concrete way.”⁶¹

The APWU asserts that the consolidation of the facilities identified in the Complaint, as well as the consolidation of other facilities in 2013, have caused and will continue to cause the Postal Service to fail to meet its service performance standards.⁶² The first of these facilities was consolidated in April 2013, the beginning of the third quarter of the fiscal year. To date, consistent with 39 C.F.R. § 3055.30, the Postal Service has only filed one service performance measurement report that encompasses

⁶⁰ *Abbott Labs.*, 387 U.S. at 148-149.

⁶¹ *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1431 (D.C. Cir. 1996) (quoting *Abbott Labs.*, 387 U.S. at 149).

⁶² Complaint ¶¶ 30-61.

the timeframe in which any of the relevant consolidations have taken place.⁶³ As explained above in Section II.C., the data in that report are insufficient to support the APWU's allegations. To show that the consolidations are causing service performance problems, the APWU would have to establish a long term trend in service performance problems and, even then, show some of causal relationship to management action that would be capable of redress. Without a trend on which to base its claim, the APWU could tie up the Commission's resources in litigating what amounts to mere anomalies in data that do not actually reflect service performance.⁶⁴ Thus, the allegations are not ripe until sufficient trends in data as well as evidence of causation exist to support the allegations.

This lack of available and appropriate data and causation should be sufficient reason to dismiss the allegations in the Complaint as unripe. Similar to the approach taken by federal courts when evaluating whether a matter is ripe for judicial review, the Commission should exercise judicial restraint based on prudential concerns, such as whether the relevant facts are sufficiently developed.⁶⁵ When evaluating whether a question is ripe, federal courts will evaluate "the fitness of issues for judicial review and the hardship to the parties if judicial consideration is withheld."⁶⁶

Whether a matter is fit for judicial review depends on factors including "whether the agency action is final" and "whether the issue presented for decision is one of law

⁶³ USPS Quarterly Service Performance Report, Quarter 3, FY 201, August 9, 2013.

⁶⁴ Order No. 465, at 16.

⁶⁵ See, e.g., *Felmeister v. Office of Attorney Ethics*, 856 F.2d 529,535-538 (3d Cir. 1988).

⁶⁶ *Id.* at 535 (citing *Abbott Labs.*, 387 U.S. at 149); see also *Nat'l Rifle Ass'n of Am. v. Magaw*, 132 F.3d 272, 284 (6th Cir. 1997) ("We must examine the likelihood that the harm alleged by plaintiffs will ever come to pass. And we must consider whether the case is fit for judicial resolution at the pre-enforcement stage, which requires a determination of whether the factual record is sufficiently developed to produce a fair adjudication of the merits of the parties' respective claims.") (internal citations omitted).

which requires no additional factual development.”⁶⁷ As explained in Section III.A., neither the consolidations of the facilities at issue in the Complaint, nor the full implementation of the Network Rationalization Plan discussed in Docket No. N2012-1, is complete. Moreover, based on the timing of the consolidations and the Postal Service’s reporting requirements, as well as the Network Rationalization Plan, significant additional factual development is necessary at this point. At a minimum, additional quarterly reports on service performance are necessary to show whether the Postal Service is falling short of its service standards. When balancing these prudential considerations with the fact that the APWU has not alleged any harm that it has or will suffer, as previously described in Section I, it would be appropriate to dismiss the Complaint as unripe.

C. The Allegations Regarding a Violation of 39 U.S.C. § 3691 Should Be Dismissed as Unripe on Grounds of Administrative Economy

Not only is the currently available data insufficient, but the Commission already has a well-established system in place for thoroughly analyzing the Postal Service’s service performance through the Annual Compliance Determination (ACD) process, which takes into account a full year’s worth of data. As the Commission explains:

39 U.S.C. 3652(a)(2)(B)(i) requires the Postal Service to report on each market dominant product’s “level of service (described in terms of speed of delivery and reliability).” The Commission evaluates whether each product meets its standard for level of service. On an annual basis, the Commission compares a product’s on-time delivery with delivery goals established by the Postal Service. For Special Services, the Commission evaluates performance data from metrics developed by the Postal Service applicable to each product.⁶⁸

⁶⁷ *Felmeister*, 856 F.2d 529, 535-538 (citing *Action Alliance of Senior Citizens v. Heckler*, 789 F.2d 931, 940 (D.C. Cir. 1986)).

⁶⁸ Annual Compliance Determination Report, Fiscal Year 2012, Docket No. ACR2012 (May 7, 2013), at 47.

The Postal Service is statutorily required to provide data on an annual basis “in sufficient detail to demonstrate that all products during such year complied with all applicable requirements” of Title 39.⁶⁹ The Commission’s annual review of these data is the most efficient use of resources as trends can be evaluated and, when appropriate, causation determined. Indeed, the ACD process would be more amenable to the APWU’s participation as a “user[] of the mail,” 39 U.S.C. § 3653(a), whereas, as explained in Section I above, section 3662 requires a greater showing of particularized interest before engaging the complaint process. The ACD also has legal implications for the Postal Service, as the Commission can order specific remedies or actions by the Postal Service in response to failures to satisfy service standards.⁷⁰

The Complaint, which contains only anecdotal assertions and case for causation, highlights the inefficiencies of reviewing the Postal Service’s service performance prior to the establishment of data sufficient to show trends in performance. Litigation of these allegations at this time would be speculative and a waste of the Commission’s resources, as well as the resources of the Postal Service and the APWU, especially at a time when both agencies have far more pressing and urgent matters to resolve. In fact, because the ACD process is in place, it may never be necessary to litigate these issues in a separate docket.⁷¹ The Commission has made it clear that it “will monitor the

⁶⁹ 39 U.S.C. § 3652(a)(1).

⁷⁰ The Commission has the authority to take appropriate action in accordance with section 3662(c), including “ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, or requiring the Postal Service to make up for revenue shortfalls in competitive products”, if the Postal Service makes a determination of noncompliance in the ACD. See 39 U.S.C. § 3653(c).

⁷¹ See *Nat’l Treasury Emps. Union*, 101 F.3d at 1431 (“Further supporting our decision that this case is prudentially unripe is the usually unspoken element of the rationale underlying the ripeness doctrine: If we do not decide it now, we may never need to.”).

effects of the Postal Service's network realignment on service performance."⁷² The ACD process offers a potentially more appropriate and timely venue in which to accomplish that aim. As such, the service performance allegations should be dismissed as not yet ripe.

IV. The APWU Is Precluded from Presenting Claims Pursuant to 39 U.S.C. § 3661 and 39 U.S.C. § 3691(d)

The APWU is also barred from bringing this Complaint due to claim preclusion, which protects parties from having to litigate the same issues repeatedly. Claim preclusion bars a subsequent action, involving either the same plaintiffs or parties in privity with those plaintiffs, from asserting claims that were, or could have been, raised in a prior action that resulted in an adjudication on the merits.⁷³ The goal of this policy is to increase reliance on judicial decisions, prevent the possibility of inconsistent decisions, conserve adjudicative resources, and spare adversaries the problems and costs of duplicative litigation.⁷⁴ Claim preclusion also bars a plaintiff from litigating claims in a subsequent action that could have been, but were not, litigated in an earlier suit.⁷⁵ To determine whether a claim is precluded, the adjudicator should specifically look at "the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which a litigant relies."⁷⁶ For claim preclusion to apply there must be "(1) an identity of parties in both suits; (2) a judgment

⁷² See, e.g., Annual Compliance Determination Report, Fiscal Year 2012, Docket No. ACR2012 (May 7, 2013), at 63. The Commission also noted that at the time that it published the ACD Report for Fiscal Year 2012, data were "too limited to draw any meaningful conclusions" which supports the Postal Service's position that evaluation of the effects of network rationalization will require sufficient data, not merely anecdotal assertions that are limited in time.

⁷³ *Bank of New York v. First Millennium, Inc.*, 607 F.3d 905 (2d Cir. 2010).

⁷⁴ See *Montana v. United States*, 440 U.S. 147, 153 (1979).

⁷⁵ *Allen v. McCurry*, 449 U.S. 90, 94 (1980).

⁷⁶ *Page v. United States*, 729 F.2d 818, 820 (D.C. Cir.1984).

rendered by a court of competent jurisdiction; (3) a final judgment on the merits; and (4) the same cause of action in both suits.”⁷⁷

As applied by analogy, the Complaint satisfies those requirements. First, the APWU and its associated groups have been party to multiple suits that discussed the merits of the new service standards, and alleged the same facts and legal issues. The APWU first challenged the network rationalization plan in trial-type proceedings in Docket No. N2012-1. Additionally, the APWU complaint case and request for an emergency order in Docket No. C2012-2 contained allegations regarding violations of 39 U.S.C. §§ 3661 and 3691.⁷⁸ Finally, a number of APWU local branches filed suit in the summer of 2013 in an attempt to block the Network Rationalization Plan as it was in progress; these challenges were rejected in Docket Nos. C2013-3 through C2013-9.

Second, the Commission asserted its jurisdiction and issued an order dismissing the claims in all of the actions, thereby satisfying the requirement that a judgment be rendered by a tribunal of competent jurisdiction.

Third, resolution on the merits of these issues has been rendered by the Commission multiple times. Docket No. N2012-1 ended with the Commission’s full advisory opinion which took the APWU’s allegations into account.⁷⁹ Docket No. C2012-2 ended with Order No. 1463, which dismissed the APWU’s complaints because they

⁷⁷ *Coleman v. Potomac Elec. Power Co.*, 310 F. Supp. 2d 154, 156-57 (D.D.C.2004) (quoting *Polisby v. Thompson*, 201 F. Supp. 2d 45, 48 (D.D.C. 2002)).

⁷⁸ The allegations in Docket No. C2012-2 were almost identical to those in this Complaint, mainly that the minor adjustment in the Postal Service’s implementation of the Network Rationalization Plan required the Postal Service to file a new section 3661 case.

⁷⁹ See *generally* Advisory Opinion.

failed to raise any material issues of fact or law.⁸⁰ Finally, the Commission dismissed with prejudice the cases from the APWU local branches in Order No. 1762.

The final prong of the test requires that the suits be based on the same cause of action. In the instant case, the APWU alleges violations of 39 U.S.C. §§ 403(c), 3661, and 3691. Each of these issues has been previously litigated. In Docket No. N2012-1, the Postal Service addressed the issue of alleged section 403(c) violations and explained that the network rationalization plan would not have a discriminatory effect, which the Commission confirmed in its advisory opinion.⁸¹ Additionally, the doctrine of claim preclusion does not simply bar claims that have been litigated, but also claims that could and should have been raised in the previous hearing on the same facts. In this instance, the APWU had the opportunity to raise a section 403(c) complaint about discrimination in a certain area in any of the seven complaints filed by its local branches. It makes little sense that these branches, based in specific geographic areas, filed complaints alleging nation-wide problems, yet the nation-wide organization was the one to allege discrimination in specific areas. The APWU's instant complaint even cites to some of the same geographic areas that were the subject of previously filed complaints, such as Tyler, Texas and Brooklyn, New York. The APWU's opportunity to claim discrimination under § 403(c) lapsed when the Commission dismissed the APWU locals' multiple complaints were dismissed with prejudice.⁸²

The alleged violations of sections 3691 and 3661 are also well-settled. The APWU accuses the Postal Service of not properly following the procedures establishing

⁸⁰ See Order No. 1463, at 15.

⁸¹ Advisory Opinion, at 149.

⁸² Of course, such claims would be subject to some of the same grounds for dismissal as this Complaint, such as ripeness.

service standards by claiming that the Postal Service ignored the needs of rural communities under section 3691, and the APWU claims that a new advisory opinion is required under section 3661. The Commission has refuted both contentions. First the Commission noted in Order No. 1762 that: “[s]ervice standards were set pursuant to section 3691, which authorizes the Postal Service to revise such regulations from time to time,”⁸³ and dismissed that element of the APUW locals’ complaints accordingly. Additionally, in Order No. 1463, the Commission confirmed that it was acceptable for the Postal Service to vary the implementation of the network rationalization plan (shifting some locations from Phase I to Phase II), explaining that “[t]he relevant standard for determining the materiality of the changes in a Final Rule is whether they work a fundamental change in the overall purpose and direction of the original Request. The Commission finds [these changes to the network rationalization plan] do not.”⁸⁴ Similarly, changing the timeline for the consolidation of facilities that were originally part of the network rationalization plan does not materially change the Final Rule or constitute a fundamental change in the overall purpose and direction of the original Request. As such, there is no issue left to be argued under either section 3661 or section 3691; the Complaint is precluded.

The APWU has repeatedly taken issue with the network rationalization plan, filing numerous complaints and comments based around the same pattern of facts, attempting to stop implementation of the plan in any way possible. As the Postal Service articulated in the Motion to Dismiss the APWU’s Complaint in Docket No. C2012-2, this Complaint is yet another veiled attempt by the APWU to litigate

⁸³ Order No. 1762, at 10 (emphasis added).

⁸⁴ Order No. 1463 at 15.

before the Commission its labor-relations concerns regarding the consolidation of Postal Service processing plants. Such concerns are plainly beyond the scope of section 3662, which does not extend to labor-relations matters.⁸⁵ To allow the claims alleged in the Complaint to proceed, despite having been expressly rejected in previous cases, would be an abuse of the Commission's authority and constitute a way to improperly intervene in a relations between labor unions and the management of the Postal Service. The complaint process should focus on actual issues raised by mailers with legitimate, particularized grievances instead of those who would simply use it as a convenient tool to achieve other ends.

Conclusion

For the reasons set forth above, the Commission should dismiss the APWU's Complaint with prejudice.

⁸⁵ Section 3662(a) allows only for complaints based on "sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions)." None of the enumerated provisions address labor issues. In fact, the PAEA's drafters expressly provided that the PAEA's provisions, including the new section 3662, would have no effect on labor-management relations. Pub. L. No. 109-435, § 505(b), 120 Stat. 3198, 3236 (2006).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno
Chief Counsel
Global Business &
Service Development

Caroline R. Brownlie
Kyle R. Coppin
Jacob D. Howley
James M. Mecone
Keith C. Nusbaum
Michael T. Tidwell

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-6687; Fax -5402
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